

CAROLINE M. HORLBECK

ATTORNEY AT LAW

101 WHITSETT ST.  
GREENVILLE, SOUTH CAROLINA 29601  
horlbecklawfirm@gmail.com

(864) 315-9919  
Fax(864) 232-4756

*Handwritten initials*

August 29, 2014

**RECEIVED**

SEP 03 2014

**S.C. SUPREME COURT**

**Via Regular Mail**

Mr. Daniel E. Shearouse  
Clerk, The S.C. Supreme Court  
Post Office Box 11330  
Columbia, South Carolina 29211

Re: JOHNNY HITT v. State

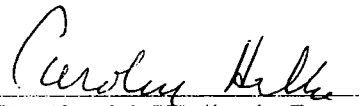
Dear Mr. Shearouse:

Enclosed you will find the original Notice of Appeal in the above matter along with Proof of Service upon the Respondents. The Notice has been filed with the Greenville County Clerk of Court.

These matters are being referred to the Office of Appellate Defense in that we were participating as Court appointed counsel at trial.

Thank you for your attention to this matter.

Yours very truly,

  
Caroline M. Horlbeck, Esq.

Enclosure

cc: Office of the Attorney General  
Office of Appellate Defense

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas  
THE HONORABLE Robin B. Stilwell

CA No. 2013-CP-23-2302

JOHNNY HITT,

APPELLANT,

vs.

STATE OF SOUTH CAROLINA

RESPONDENT.

**RECEIVED**

SEP 03 2014

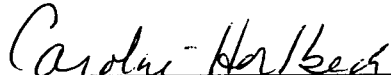
**S.C. SUPREME COURT**

FILED-CLERK OF COURT  
GREENVILLE CO. S.C.  
PAUL B. WICKENSIMMER  
2014 AUG 29 PM 1 23

**NOTICE OF APPEAL**

Appellant JOHNNY HITT, appeals from the Order of the Honorable Robin B. Stilwell, Circuit Court Judge clocked August 5, 2014.

Respectfully submitted,

  
Caroline M. Horlbeck, Esq.  
101 Whitsett St  
Greenville, SC 29601

Date: August 29, 2014

Other Counsel of Record: Karen Ratigan, Esq.  
Assistant Attorney General  
Post Office Box 11549  
Columbia, SC 29211

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

COUNTY OF GREENVILLE

C.A. No. 2013-CP-23-2302

Johnny Hitt,

Appellant,

-vs-

CERTIFICATE OF SERVICE

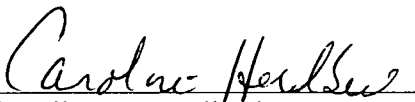
State of South Carolina,

Respondent.

This is to certify that I am an employee in the law office of Caroline M. Horlbeck, attorneys for Appellant, and that I have this day caused to be served upon the person(s) named below Appellant's Notice of Appeal by placing copies of same in the United States mail, with adequate postage thereon, addressed as follows:

Ms. Lorie French  
S.C. Office of Appellate Defense  
P.O. Box 11433  
Columbia, SC 29211

Karen Ratigan, Esq.  
Office of the Attorney General  
P.O. Box 11549  
Columbia, SC 29211

  
Caroline M. Horlbeck

Greenville, South Carolina

Aug. 29, 2014

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF GREENVILLE )  
 )  
 Johnny Randy Hitt, )  
 S.C.D.C. No. 339641, )  
 )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )

IN THE COURT OF COMMON PLEAS  
 C.A. No. 2013-CP-23-2302

**ORDER OF DISMISSAL**

FILED CLERK OF COURT  
 GREENVILLE CO. S.C.  
 PAUL B. WICKENSIMMER  
 2014 AUG 5 AM 9 58

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed April 24, 2013. The Respondent made its return and partial motion to dismiss on September 19, 2013. A hearing was convened on June 20, 2014, at the Greenville County Courthouse. The Applicant was present at the hearing and represented by Caroline Horlbeck, Esquire. Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

The Applicant testified on his own behalf. Also testifying was the Applicant's plea counsel, Randall L. Chambers, Esquire. The Court had before it a copy of the plea transcript, the records of the Greenville County Clerk of Court, the Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, the return and partial motion to dismiss, and Applicant's Exhibits 1-2.

**PROCEDURAL HISTORY**

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Greenville County Clerk of Court. The Applicant was indicted at the February 2010 term of the Greenville County Grand Jury for two counts of

1  
 RB ?

Attempted Burglary (2009-GS-23-1501, -1509), two counts of Malicious Injury to Real Property (2009-GS-23-1502, -1503), three counts of Second-Degree Burglary (2009-GS-23-1504, -1506, -1508), and Safecracking (2009-GS-23-1505). He was represented by Randall L. Chambers, Esquire.

On March 8, 2010, the Applicant pled guilty to four counts of Second-Degree Burglary, two counts of Malicious Injury to Personal Property, and one count each of Attempted Second-Degree Burglary and Safecracking. He was sentenced by the Honorable G. Edward Welmaker to concurrent terms of ten years for each count of Attempted burglary, five years for each count of Malicious Injury to Personal Property, ten years for attempted Second-Degree Burglary, and ten years for Safecracking. The Applicant did not appeal.

### **ALLEGATIONS**

In his application, the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. "I was not advised of any right to appeal."
2. "Was dennied mental evaluation."
3. "Due process violation."
4. "[D]uring period of custody in county applicant atempte suicide."
5. "Applicant is legally retarded a functional illit."

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

### **Partial Motion to Dismiss**

This Court finds the current PCR application should be dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §§ 17-27-10, et. seq. (2003). South Carolina Code Ann. § 17-27-45(a) reads as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

The Applicant pled guilty to the offenses he challenges in this application on March 8, 2010. The Applicant was therefore required to file his application before March 8, 2011. This application was filed on April 24, 2013, which was more than two years after the statutory filing period had expired.

The statute of limitations contained in section 17-27-45(a) sets forth a bright-line test that must be followed by this Court in determining whether an application for PCR was filed in a timely manner. This Court finds the Applicant has failed to set forth any cognizable reason that would justify disregarding this one-year statute of limitations. As such, all issues related to the Applicant's guilty plea hearing – except for that of a review of direct appeal issues– are summarily dismissed.

### Appeal

The Applicant stated he had prior psychiatric diagnoses but admitted he never provided plea counsel with contact information for this doctor. The Applicant stated he had audiovisual hallucinations and suicide attempts while at the detention center. The Applicant admitted he had a prior guilty plea in 2008 and a probation revocation in 2010 but was never evaluated for either proceeding. The Applicant stated he never asked plea counsel to file a notice of appeal but that counsel should have done so because he was not competent to plead guilty.

Plea counsel testified the Applicant had a clear recollection of the facts in issue and lucidly discussed these facts with him. Plea counsel testified he was aware the Applicant was on psychiatric medication and that the Applicant mentioned a prior psychiatric diagnosis (but did not give any specifics). Plea counsel testified he was aware the Applicant had a suicide attempt while in the detention center but that he did not request the Applicant's medical records from that institution because the Applicant clearly recalled (and discussed) the facts and made several suggestions as to the direction of the case. Plea counsel indicated a psychiatric evaluation was not necessary in this case. Plea counsel testified the Applicant understood the guilty plea process. Plea counsel testified he generally discusses appeal rights with his clients and that the Applicant never asked him to file an appeal.

This Court finds the Applicant's allegation that he was denied a direct appeal is without merit. Plea counsel has a constitutionally imposed duty to consult with the defendant about an appeal only when there is reason to think either: (1) that a rational defendant would want to appeal or (2) that this defendant reasonably demonstrated to counsel that he was interested in appealing. Roe v. Flores-Ortega, 528 U.S. 470, 480, 120 S. Ct. 1029, 1036 (2000). In order to make this determination, "courts must take into account all the information counsel knew or should have known." Id. (citing Strickland v. Washington, 466 U.S. 668, 690, 104 S. Ct. 2052, 2066 (1984)). Although not determinative, a highly relevant factor will be whether the conviction follows a trial or a guilty plea, both because a guilty plea reduces the scope of potentially appealable issues and because a plea may indicate the defendant seeks an end to judicial proceedings. Id.

This Court finds the Applicant was lucid during both plea counsel's representation and the guilty plea hearing. This Court notes the Applicant was lucid enough to recognize what

charges were appropriate and what charges were not. The guilty plea was fashioned specifically to address those charges for which he was willing to plead and those for which he was not. (Plea transcript, pp.9-16). The record further shows the plea judge was aware of the Applicant's mental health history and medication. (Plea transcript, p.7; p.25). The plea transcript – taken together with the Applicant's PCR testimony – demonstrates he is a calculating and intelligent young man who entered a voluntary guilty plea. See Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 657 (2000) (holding that, when determining issues relating to guilty pleas, the court will consider the entire record, including the transcript of the guilty plea, and the evidence presented at the PCR hearing). The transcript also indicates the plea judge advised the Applicant of the right to appeal. (Plea transcript, p.21). This Court finds the Applicant has failed to demonstrate any incompetency or incapacity that would have prevented him from requesting plea counsel file a notice of appeal. See Jeter v. State, 308 S.C. 230, 232, 417 S.E.2d 594, 596 (1992) (“In a PCR action, the petitioner bears the burden of proof and is required to show by a preponderance of the evidence he was incompetent at the time of his plea.”). Plea counsel indicated he did not believe a competency evaluation was necessary and testified the Applicant was lucid in their conversations about the facts and direction of the case. This Court finds plea counsel's testimony is credible. This Court finds the Applicant was aware of his right to an appeal and chose not to exercise that right. This Court finds the Applicant has failed to meet his burden of proving he is entitled to a review of his direct appeal issues pursuant to White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974).

#### All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds the Applicant failed to

present any evidence regarding such allegations. Accordingly, this Court finds the Applicant waived such allegations and failed to meet his burden of proof regarding them. Therefore, they are hereby denied and dismissed.

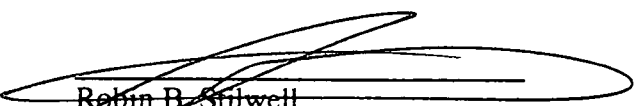
### CONCLUSION

Based on all the foregoing, this Court finds and concludes the both that the Applicant did not timely file this PCR application and that he is not entitled to a review of his direct appeal issues pursuant to White v. State.

#### **IT IS THEREFORE ORDERED:**

1. That the Respondent's partial motion to dismiss is granted;
2. That the Applicant's request for a review of his direct appeal issues pursuant to White v. State is denied; and
3. That the Applicant be remanded to the custody of the Respondent.

**AND IT IS SO ORDERED** this 1 day of AUG, 2014.

  
Robin B. Stilwell  
Presiding Judge  
Thirteenth Judicial Circuit

Greenville, South Carolina

CAROLINE M. HORLBECK

*Wang & Law*

101 WHITSETT ST.  
GREENVILLE, SOUTH CAROLINA 29601



Via Regular Mail

Mr. Daniel E. Shearouse  
Clerk, The S.C. Supreme Court  
Post Office Box 11330  
Columbia, South Carolina 29211